

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HIGHLAND CAPITAL MANAGEMENT, LP,

Plaintiff,

v.

CITIGROUP GLOBAL MARKETS,
INC., BABSON CAPITAL MANAGEMENT LLC,
and THE BANK OF NEW YORK MELLON
TRUST, N.A.,

Defendants.

Civil Action No. 3:12-CV-01100

**DEFENDANT BABSON CAPITAL MANAGEMENT LLC'S OPPOSITION TO
PLAINTIFF'S SUPPLEMENTAL MOTION TO REMAND**

Defendant Babson Capital Management LLC ("Babson") respectfully submits this opposition to the supplemental motion by Plaintiff Highland Capital Management, LP to remand this action to the District Court of Dallas County, Texas, and joins in the opposition of Defendant Citigroup Global Markets, Inc. ("Citigroup"), also filed on June 8, 2012.

Babson hereby confirms that Babson was served in this action on April 10, 2012. Babson had not yet been served at the time Citigroup filed for removal on April 9, 2012, and therefore, was not required to take any action to effectuate removal. *See, e.g.*, 28 U.S.C. § 1446(b)(2)(A) ("When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action."); *Getty Oil Corp. v. Ins. Co. of N. America*, 841 F.3d 1254, 1261 n.9 (5th Cir. 1988) ("Defendants (at least those not citizens of the forum state) who are unserved when the removal petition is filed need not join in it.") (citing *Pullman Co. v. Jenkins*, 305 U.S. 534 (1939)). Accordingly, Plaintiff's supplemental motion to remand should be denied.

In any event, even though Babson was not required to do so, on April 6, 2012, Babson authorized Citigroup to formally represent to the Court that Babson consented to the removal of

this action pursuant to Citigroup's notice of removal. Babson further demonstrated its consent to the removal, both the original removal and as amended on April 30, 2012, by filing a notice of appearance in this Court and a joinder in opposition to Plaintiff's Motion to Remand [Dkt #4, 20].

For these reasons, Babson respectfully submits that Plaintiff's supplemental motion to remand this action should be denied.

Dated: June 8, 2012

Respectfully submitted,

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*Attorneys for Defendant Babson Capital
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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2012, all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5.1(d), and other parties will be served in compliance with the Federal Rules of Civil Procedure.

/s/ Tracy N. LeRoy
Tracy N. LeRoy